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Docket No.: 208671US0 TECH CENTER 1600/2900

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

RE: Application Serial No.: 09/893,680

Applicants: Hiroyuki ISHIWATA, et al.

Filing Date: June 29, 2001

For: BIS (2-ARYL-5-PYRIDYL) DERIVATIVES

Group Art Unit: 1624

Examiner: Brenda Libby COLEMAN

SIR:

Attached hereto for filing are the following papers:

**Response to Restriction and Election of Species Requirement**

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: :  
HIROYUKI ISHIWATA ET AL : GROUP ART UNIT: 1624  
SERIAL NO.: 09/893,680 :  
FILED: JUNE 29, 2001 : EXAMINER: COLEMAN, B. L.  
FOR: BIS (2-ARYL-5-PYRIDYL) DERIVATIVES

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENT

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

SIR:

In response to the Official Action dated September 23, 2002, Applicants elect, with traverse, Group I, Claims 1-14, where X if formula (4), for further prosecution. In addition, Applicants elect, with traverse, N,N'-bis[2-(3,4,5-trimethoxyphenyl)-5 pyridyl]-N,N'-dimethylethylenediamine dimethanesulfonate (Example 7, page 39, line 15 to page 40, line 18) as a single disclosed Species. Claims 1-14 are believed to read on the elected species.

REMARKS

The Office has required restriction in the present application as follows:

Group I: Claims 1-14, drawn to compounds, compositions and method of use of the compounds of formula (1) where X is formula (4);

Group II: Claims 1, 2, 4-14, drawn to compounds, compositions and method of use of the compounds of formula(1) where X is formula (3); and

Group III: Claim 1, 2, 4-14, drawn to compounds, compositions and method of use of the compounds of formula (1) where X is formula (2).

In addition, the Examiner has also required the election of a single disclosed Species for the elected Group.

In response to the Official Action dated September 23, 2002, Applicants elect, with traverse, Group I, Claims 1-14, where X if formula (4), for further prosecution. In addition, Applicants elect, with traverse, N,N'-bis[2-(3,4,5-trimethoxyphenyl)-5 pyridyl]-N,N'-dimethylethylenediamine dimethanesulfonate (Example 7, page 39, line 15 to page 40, line 18) as a single disclosed Species. Claims 1-14 are believed to read on the elected species.

MPEP in §803 states as follows:

"If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office, particularly in view of the fact that Groups II and III are classified in the same subclass (Class 514, subclass 253.01).

Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated the conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Finally, with respect to the elected species, Applicants respectfully submit that, should

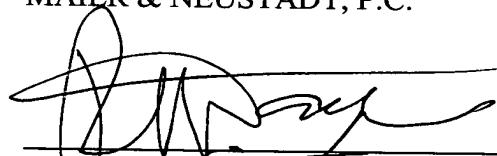
the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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